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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

# ERS NEWS

United States Bankruptcy Court for the District of Minnesota

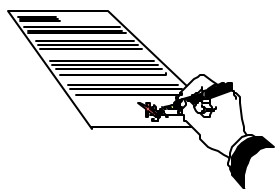
A New Approach to Information Management

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## Important News for New Electronic Filers!

### Signatures



The court divides signatures in the electronic environment into two categories, ERS-registered attorney signatures and all other signatures.

#### ERS Registered Attorney Signatures

Rule 11 of the Federal Rules of Civil Procedure states that "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name . . . ." In their order establishing electronic filing, the judges stated that receipt of an ERS password and the electronic filing of a document by an attorney who is an ERS registered participant in the electronic case filing system constitutes the signature of that attorney under Rule 9011 of the Federal Rules of Bankruptcy Procedure and Local Rule 9011-4. This has been the procedure for attorney signatures since the judges established the made the electronic file the official court record on January 15, 1999.

#### Non-ERS Registered Signatures Filing Motions

The judges *have changed the procedure* regarding submission of an original signature of non-ERS registered participants. The old procedure required that the attorney mail the original signed signature declaration form to the court within five days of the electronic filing. *That requirement has been eliminated.* The judges now accept a scanned image of a document containing a "holographic" signature, that is, an **image** of an original signature. The signature of a non-ERS registered participant can appear on a page

of a document that has been printed, signed by an individual, scanned, converted to a PDF (portable document format), and inserted at the appropriate location in the electronic filing being submitted to the court.

### Filing Petitions

When filing a petition, the attorney uses the Signature Declaration Form found at *What's New* on the court's web site, [www.mnb.uscourts.gov](http://www.mnb.uscourts.gov). The attorney prints the form, which is then signed by the debtor, scanned, converted to PDF, and inserted as the last page of the petition. Alternatively, the attorney may electronically submit the scanned image of the signed form within five days of the electronic filing using the motion filing feature on the web site.

### Service

The judges have eliminated the earlier requirement that ERS-registered attorneys waive their right to receive service conventionally and agree to receive service electronically. This requirement also stipulated that ERS-registered attorneys serve parties electronically as well. *Both of these requirements have been eliminated.*



A February 8, 2001 order now requires that attorneys serve other parties conventionally as they would in the paper world. Service of an electronically filed document can now be made in any conventional manner

permitted or authorized by any applicable rule. The attorney prints the electronically filed document and serves it in the manner the attorney deems necessary.

## **General Document Filing Issues**

### **Relief Stay Motions**

In their order of February 8, 2001, the judges required that all motions for relief from the automatic stay and any related documents be filed electronically. The court urges attorneys to become registered and file electronically through the ERS. Over 93 percent of attorneys file documents relating to a relief-from-stay-motion over the Internet. The court will also accept the filing of such documents on a computer diskette. Instructions for filing on diskette are found on the web site at ERS Training.

### **Payment of Filing Fees**

ERS-registered attorneys are required to sign a credit card blanket authorization which enables the clerk's staff to post the charges to their account. A copy of an authorization form can be downloaded from the web site at *ERS Training*. United States Treasury Regulations require the use of such a form. Requirements include the credit card number and expiration date, as well as the name and signature of each person authorized to electronically file a document requiring a filing fee. The court accepts Visa, MasterCard, American Express, Discover and Diners Club and the card can be a personal or business account.

The clerk's staff posts the charge to the attorney's account no later than the next business day after receipt of the electronic filing and then issues and mails a receipt to the attorney. Since not all credit card companies provide an itemized statement, it is a good practice to maintain a record of the payment of the filing fee.

### **The Effect of Filing Documents Electronically**

Documents filed electronically immediately become part of the official record of the main bankruptcy case or adversary proceeding. The document is deemed filed when the court receives the electronic filing, and the

electronic image is immediately available to anyone with Internet access. Moreover, the ERS-registered attorney makes the actual docket entry on the court's electronic docketing system. This means that a petition is considered filed the moment the electronic filing reaches the court, and the automatic stay begins at that moment. Within seconds of the filing, the ERS automatically generates and sends a Notice of Electronic Filing (NEF) to the attorney which records the exact time the document was received. The electronic filing of a complaint begins an adversary proceeding and generates an electronic summons which the attorney can print and serve.

The clerk's office staff checks all electronic submissions, all images, and all docket entries for accuracy. The court never deletes an image or docket entry, but may add clarifying language to the docket text.



### **Filing Errors**

Occasionally there is a mistake in an electronic filing, such as the motion papers are out of order or a motion has been filed to the wrong case. A court administrator, either the deputy-in-charge or a supervisor, will call the attorney and explain the procedure to remedy the error.

### **Exhibits**

There are four ways to handle an exhibit when filing electronically.

- ◆ If the exhibit was originally produced in electronic text format, the attorney converts the exhibit to PDF and inserts it where it would normally be inserted in a paper filing.

- ◆ If the exhibit was originally produced in a paper format and can be easily scanned, the attorney scans the exhibit, converts the image to PDF, and inserts the exhibit where it would normally be inserted in a paper filing.
- ◆ If the exhibit is too large to scan in the lawyer's office, the attorney can send the paper exhibit to the clerk's office where staff will use a high-speed scanner to scan and file the exhibit and create the docket entry.
- ◆ In unusual circumstances, the judge may allow the attorney to annex germane excerpts of the exhibit to the motion that will be filed electronically. The attorney must clearly identify these excerpts and make the complete exhibit available to the court and to counsel upon request, as well as make it available at the hearing. Persons filing excerpts of exhibits do so without prejudice to their right to file additional excerpts or the complete exhibit with the court at any time.

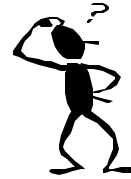
An ERS-registered attorney may electronically file a motion to file a document under seal, but the document itself **should not be filed** electronically. The attorney should file the document in paper form as well as on a computer diskette, in case an order is entered unsealing the document, the clerk's office staff can make the document part of the electronic file.



### Security

The court considers security of the electronic file a primary goal. The court uses encryption, fire walls and passwords to ensure the security of the electronic record. Staff make daily backups of the data and these backups are stored off site. Security is an issue for

ERS-registered attorneys as well. It is imperative that the ERS -registered attorney maintain the security of the court-issued password since this password constitutes the attorney's signature for the purpose of electronic filing.



### Ethical Issues

Electronic filing does not raise any novel issues, rather, the electronic and paper world share common concerns. For example, the court issued password raises not only security, but ethical issues as well. Just as an attorney would not want a third party filing a document under the attorney's signature in the paper world, the same is true in the electronic world. Attorneys may choose to authorize staff to file documents for them, but if the password is compromised or if a staff member who knows the password leaves the firm, the attorney should change the password. The attorney can change the password by logging on to the system, clicking the *Case Filing* button and selecting #4 on the *Filing Options* panel.

The Model Rules of Professional Responsibility suggest some potential ethical issues common to both the paper and electronic environment. In terms of candor toward the tribunal, the prohibition against submitting and defending misstatements remains. Attorneys are prohibited from falsely signing a client's name and representing to the court that the client signed it. Attorneys are prohibited from altering a document after it has been signed. There is also the same duty of truthfulness in statements to others. And since staff will be electronically submitting filings, attorneys must supervise their work and retain responsibility for it, ensuring that the nonlawyer's conduct is compatible with lawyers' ethical responsibilities.

The court is often asked why a debtor's Social Security Number is included on the web site. Rule 1005 of the Federal Rules of Bankruptcy Procedure requires that the petition contain the name of the court, the title of the case, and the docket number.

The title of the case consists of the name of the debtor and the debtor's Social Security Number or federal tax identification number. The rules do not give the clerk discretion to withhold a Social Security Number in the title of a case. The official form require a debtor's Social Security Number. There is a strong legal presumption rooted in constitutional and common law principles that documents in a bankruptcy case or adversary proceeding are public records. Nevertheless, the issue is under discussion by an eight-member Judicial Conference Subcommittee on Privacy and Electronic Access to Case Files and this subcommittee was scheduled to report to the Court Administration and Case Management Committee for its September meeting.

There is also a disclosure issue to clients, namely, that their documents will be available to anyone with Internet access. The court has received no reports of abuse of information found on the web. To the contrary, the availability and reliability of bankruptcy information has served to provide needed information quickly and easily.



## Register for Training

### Level 1

This option is designed for attorneys who want to become certified electronic filers, but will authorize their staff to file the documents for them. This two-hour session includes an overview of electronic filing policies and procedures; a discussion of legal implications of electronic filing and the general orders; and a demonstration of case opening, motion filing, and adversary proceeding opening. It does not include any hands-on training and there is no CLE credit for this option. An electronic filing password is issued to the attorney which constitutes the attorney's signature for the purpose of electronic filing. The attorney, however, is not authorized to file to the live database until staff members complete Level 2 training and the required test filings are successfully completed.

### Level 2

This option is for attorneys who intend to file their own documents and for staff of attorneys who attend Level 1. This five-hour training session focuses on hands-on training. At the conclusion of this training session, filing exercises are distributed and should be completed by the attorney within one month after training. A total of 5 law office management CLE credits have been approved for attorneys who attend this session (3.25 for motion filing and 1.75 for case opening).

### Level 3

This review option is available for attorneys/or staff who previously attended training but did not complete their test filings. This three-hour session focuses on hands-on training to assist attendees in completing their filing exercises. No CLE credit is authorized for this session.

Click *ERS Training* on the home page, [www.mnb.uscourts.gov](http://www.mnb.uscourts.gov) to get more information regarding training dates. Click *Training Request Form* to display a form to register for ERS training. Complete the form online and e-mail or fax it to the address listed on the form.

### Hardware and Software

Filing electronically requires specific hardware and software:

- ◆ A personal computer running a standard platform such as Windows 95 or Macintosh
- ◆ A n I n t e r n e t provider
- ◆ Net scape 4.76 or higher\* or Internet Explorer 5.5
- ◆ A d o b e Acrobat Writer
- ◆ A scanner
- ◆ A virus checker



\* Netscape 6.0 is not compatible with the ERS

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